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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE INC.

Defendant.

Case No. 3:10-cv-03561-WHA

Honorable Judge William Alsup

**DEFENDANT GOOGLE INC.'S
RESPONSES TO PLAINTIFF'S
INTERROGATORIES, SET ONE**

1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant Google Inc.
2 (“Google”), through its attorneys, responds to *Plaintiff’s Interrogatories to Defendant Google*
3 *Inc., Set One* (“Plaintiff’s Interrogatories”), served by plaintiff Oracle America, Inc. (“Plaintiff”
4 or “Oracle”) on December 2, 2010, as follows.

5 **GENERAL OBJECTIONS**

6 1. Google responds generally that discovery has just begun and its investigations of
7 the facts relevant to this litigation are ongoing. Google’s responses herein are given without
8 prejudice to Google’s right to amend or supplement in accordance with Rule 26(e) of the Federal
9 Rules of Civil Procedure, the Civil Local Rules, the Court’s Supplemental Order to Order Setting
10 Initial Case Management Conference, any applicable Standing Orders, and the Case
11 Management Order entered by the Court.

12 2. Google generally objects to Plaintiff’s Interrogatories, and the “Definitions and
13 Instructions” related thereto, to the extent they are inconsistent with or impose obligations
14 beyond those required by the Federal Rules of Civil Procedure, the Civil Local Rules, the Patent
15 Local Rules, the Court’s Supplemental Order to Order Setting Initial Case Management
16 Conference, any applicable Standing Orders, and the Case Management Order entered by the
17 Court. In responding to each Interrogatory, Google will respond as required under Rule 33 of the
18 Federal Rules of Civil Procedure.

19 3. Google objects to Oracle’s definition of “Java Platform” on the grounds that the
20 definition is overbroad and misleading to the extent it purports to include “the Java programming
21 language,” as to which Oracle does not own proprietary rights. When used in Google’s
22 responses, the phrase “Java Platform” shall not include “the Java programming language” and,
23 without acknowledging or agreeing that Oracle owns any proprietary rights in any elements
24 thereof, shall have the meaning ascribed to that phrase in paragraph 9 of Oracle’s Amended
25 Complaint, namely “a bundle of related programs, specifications, reference implementations, and
26 developer tools and resources that allow a user to deploy applications written in the Java
27 programming language on servers, desktops, mobile devices, and other devices,” including but
28 not limited to the Java compiler, the Java Virtual Machine, the Java Development Kit, the Java

1 Runtime Environment, the Just-In-Time compiler, Java class libraries, Java application
2 programming interfaces, and Java specifications and reference implementations.

3 4. Google generally objects to Plaintiff's Interrogatories to the extent (a) they are not
4 reasonably calculated to lead to the discovery of admissible evidence that is relevant to any claim
5 of defense of any party; (b) they are unreasonably cumulative or duplicative; (c) they seek
6 information that is obtainable from some other source that is more convenient, less burdensome,
7 or less expensive; or (d) the burden or expense of the proposed discovery outweighs any likely
8 benefit.

9 5. Google generally objects to Plaintiff's Interrogatories to the extent they seek
10 information, documents, and/or things protected from discovery by the attorney-client privilege,
11 the work product doctrine, the common-interest privilege, and/or any other applicable privilege,
12 immunity, or protection. Nothing contained in Google's responses is intended to be, or in any
13 way shall be deemed, a waiver of any such applicable privilege or doctrine.

14 6. Google generally objects to Plaintiff's Interrogatories to the extent they request
15 information, documents, and/or things not within the possession, custody, or control of Google,
16 that are as readily available to Plaintiff as to Google, or that are otherwise in the possession of
17 Plaintiff, on the grounds that such requests are unduly burdensome.

18 7. Google objects to each of Interrogatories No. 3 through 16 as ambiguous due to
19 the reference to "Google's pleading." This literally reads as a request for Google's bases for its
20 defenses at the time of pleading either its Answer to Oracle's Complaint or Answer to Oracle's
21 Amended Complaint, but does not specify the pleading to which it is referring. Google will
22 respond with respect to its operative pleading in the case, *Google Inc.'s Answer to Plaintiff's*
23 *Amended Complaint for Patent and Copyright Infringement and Amended Counterclaims* filed
24 on November 10, 2010 (Doc. #51) ("Answer and Counterclaims"). Google recognizes that this
25 language could also be intended to request the bases for Google's assertions or contentions
26 generally. Accordingly, Google is also providing a response directed toward its bases for its
27 defenses generally, subject to a general objection that discovery has just begun, and Google is
28 still developing its defenses.

1 8. Google further objects to each of Interrogatories No. 3 through 16 due to the use
2 of the phrase “affirmative defense.” Google’s Answer and Counterclaims does not refer to the
3 defenses as “affirmative defenses,” and Google objects to the use of the term to the extent Oracle
4 is attempting to suggest any burden in relation to any of the defenses beyond what is required by
5 any applicable statute or case law. Some of the defenses listed are clearly not affirmative
6 defenses. For example, Oracle identifies Substantial Non-Infringing Uses (Patent) as an
7 affirmative defense, when it is Oracle’s burden to show an absence of substantial noninfringing
8 use pursuant to 35 U.S.C. 271(c).

9 9. Google further objects to each of Interrogatories No. 3 through 16 for
10 specifically seeking attorney work product and attorney-client privileged information.

11 10. Google further objects to each of Interrogatories No. 3 through 16 as unduly
12 burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The
13 bases for Google’s pleading of its defenses is of little value at this point because its bases for
14 maintaining its allegations have changed since the filing of Google’s Answer and Counterclaims
15 due to, for example, the receipt of Oracle’s Patent Local Rule 3-1 disclosures. Google’s bases
16 may and likely will continue to change as discovery unfolds.

17 11. Google further objects to each of Interrogatories No. 3 through 16 for implying
18 any pleading obligations on Google beyond those required by the Federal Rules of Civil
19 Procedure, the Civil Local Rules, the Patent Local Rules and any applicable Standing Orders. In
20 particular, Google objects to each of Interrogatories No. 3 through 16 for implying that Google
21 was required to have evidentiary support at the time of pleading in view of the fact that certain
22 factual contentions were made “upon information and belief” that, after a reasonable opportunity
23 for further investigation, Google would likely have evidentiary support.

24 12. Google further objects to each of Interrogatories No. 3 through 16 for seeking the
25 bases for pleading in response to Oracle’s Amended Complaint, which was deficient in many
26 respects, or for seeking Google’s current positions on its defenses in view of Oracle’s Patent
27 Local Rule 3-1 disclosures, which were also deficient. Oracle’s Amended Complaint did not
28 identify any asserted claims of the Patents-in-Suit; Oracle’s Patent Local Rule 3-1 disclosures

1 did not identify accused products with any reasonable specificity on a claim by claim basis; and
2 both documents failed to include any factual allegation for many elements as to which Oracle has
3 the burden of proof. Any response below does not constitute a waiver of any work product or
4 attorney-client privileged material relating to Google's interpretation of the numerous
5 ambiguities contained in Oracle's Amended Complaint and Patent Local Rule 3-1 disclosures.
6 Further, any response below should not be considered any affirmative representation that Oracle
7 has presented a cognizable claim, met its Rule 8 obligations or met its obligations under Patent
8 Local Rule 3-1, or that particular information in the response will represent an applicable basis in
9 the future as further clarity as to Oracle's allegations is attained. Google further objects to each
10 patent-related Interrogatory as unnecessary in view of the specific disclosures contemplated by
11 the Patent Local Rules as well as premature at least because claim terms have not been
12 construed.

13 13. Despite the ambiguity in Oracle's Interrogatories created by the use of the word
14 "pleading," Google provides the following responses with respect to its bases for both pleading
15 its defenses and maintaining them. Google explicitly preserves its work product and attorney-
16 client privileged information and other relevant objections. Google has conducted a reasonable
17 inquiry sufficient to comply with any obligations with respect to these Interrogatories, and makes
18 no representation that these responses include an exhaustive list of all facts relevant to the
19 defenses identified in these Interrogatories. Inclusion of Oracle's allegations in a list of facts in
20 any response herein does not mean that Google agrees with the veracity of the allegation, but
21 merely references the fact that particular allegations were made. Google expressly maintains all
22 objections made in responsive pleadings. Google makes no representation that its responses
23 below completely set forth all of its bases for its defenses, as Google objects that such a response
24 would be unduly burdensome, premature, and require the unwarranted disclosures of attorney
25 work product and attorney-client privileged information.

26 14. Google incorporates by reference these General Objections into the specific
27 objections and responses set forth below. While Google may repeat a General Objection for
28 emphasis or some other reason, the failure to specifically refer to any General Objection does not

1 constitute a waiver of any sort. Moreover, subject to the requirements of Rule 33 of the Federal
 2 Rules, Google reserves the right to alter or amend its objections and responses set forth herein as
 3 additional facts are ascertained and analyzed.

4 15. Google remains willing to meet and confer with respect to any of its objections to
 5 assist Plaintiff in clarifying or narrowing the scope of the requested discovery, and reserves the
 6 right to move for a protective order if agreement cannot be reached.

7 8 **SPECIFIC OBJECTIONS AND RESPONSES**

9 Google's responses to Plaintiff's Interrogatories are based upon Google's current
 10 information and belief as a result of reasonable searches and inquiries. Google reserves its right
 11 to amend and supplement its responses as it learns additional facts.

12 **INTERROGATORY NO. 1:**

13 Identify who had architectural, functional design, and coding responsibilities in the
 14 development of Android and briefly describe their roles in that development.

15 **RESPONSE:**

16 In addition to its General Objections, Google objects to this Interrogatory as vague and
 17 ambiguous in the use of the phrases "architectural," "functional design," and "coding
 18 responsibilities." Google further objects to this Interrogatory as overbroad and unduly
 19 burdensome to the extent that it seeks an identification of all individuals involved in the
 20 development of all aspects of Android, as such a listing would include hundreds of individuals
 21 whose identities are neither material nor relevant to the present litigation.

22 Subject to the foregoing objections and the General Objections, without waiver or
 23 limitation thereof, Google will identify individuals involved in the development of the relevant
 24 aspects of Android, and states that the following table provides information responsive to this
 25 Interrogatory:

Name	Affiliation	Role
Andy Rubin	Google employee - on Android team from 2005 to present	Project Lead for Android - responsible for overall Android development.
Hiroshi Lockheimer	Google employee - on Android team from 2006 to present	Engineering Director for Android - responsible for overall Android technical development.
Steve Horowitz	Former Google employee - on Android team from 2006 to 2009	Engineering Director for Android - was responsible for overall Android technical development.
Dan Bornstein	Google employee - on Dalvik team from 2005 to present	Technical Lead and Manager for Dalvik team - responsible for overall technical development of the Dalvik project, including the Dalvik Virtual Machine (VM), the Dalvik JIT compiler, the dx tool and the Android core libraries.
Andy McFadden	Google employee - on Dalvik team from 2006 to present	Technical Lead for the development of the Dalvik VM.
Dave Bort	Google employee - on Dalvik team from 2006 to 2008	Contributed to the development of the Dalvik VM, including the Dalvik garbage collector.
Bob Lee	Former Google employee - on Dalvik team from 2006 - 2010	Technical lead for the development of the Android core libraries.
Mike Fleming	Google employee - on Dalvik team from 2007 to 2009	Contributed to the development of the Dalvik VM and the dx tool.
Ben Cheng	Google employee - on Dalvik team from 2008 to present	Contributed to the development of the Dalvik JIT compiler and the dx tool.
Michael Chan	Google employee - on Dalvik team in 2008	Contributed to the development of networking-related features for Dalvik.
Dan Rice	Google employee - on Dalvik team from 2008 to 2009	Contributed to the development of the Android core libraries.
Chris DeSalvo	Former Google employee - on Dalvik team from 2008 to 2009	Contributed to the development of Dalvik tools.
Bill Buzbee	Google employee - on Dalvik team from 2008 to present	Contributed to the development of the Dalvik JIT compiler and features of the Dalvik VM.

1	Josh Bloch	Google employee - on Dalvik team in 2009.	Contributed to the development of the Android core libraries.
2	Jesse Wilson	Google employee - on Dalvik team from 2009 to present.	Technical lead for the development of the Android core libraries.
3	Elliott Hughes	Google employee - on Dalvik team from 2009 to present.	Contributed to the development of Android core libraries and features of the Dalvik VM.
4	Barry Hayes	Former Google employee - on Dalvik team from 2009 to 2010.	Contributed to the development of the Dalvik garbage collector.
5	Carl Shapiro	Google employee - on Dalvik team from 2009 to present.	Contributed to the development of the Dalvik garbage collector.
6	Jeff Hao	Google employee - on Dalvik team from 2009 to present.	Contributed to the development of the Dalvik JIT compiler, the dx tool and features of the Dalvik VM.
7	Brian Carlstrom	Google employee - on Dalvik team from 2010 to present.	Contributed to the development of the Android core libraries and Dalvik tool.
8	Brad Fitzpatrick	Google employee - on Dalvik team from 2010 to present.	Contributed to the improvement and maintenance of overall system performance of Android.

16 Google further states in response to this Interrogatory that certain third parties contributed
17 to the development of code for Android, but that the identities of such third parties and the
18 specific nature of their involvement is subject to contractual confidentiality provisions. Google
19 is undertaking to obtain the consent of the relevant parties to disclosing additional information,
20 and reserves the right to supplement this response promptly once such consent is obtained.
21 Further, Google's investigation into identifying additional third parties (if any) is ongoing, and
22 Google therefore reserves the right to supplement this response accordingly.

23 **INTERROGATORY NO. 2:**

24 Identify who at Google was and is responsible for Android's compliance with the
25 intellectual property rights of third parties and briefly describe their roles in that regard.

26 **RESPONSE:**

27 In addition to its General Objections, Google objects to this Interrogatory as vague and
28 ambiguous in the use of the phrases "compliance," and "intellectual property rights of third

parties.” Google further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states:

Dan Bornstein is the Technical Lead for the Dalvik team and is responsible for the review of code for the Dalvik project. Hiroshi Lockheimer is an Engineering Director for Android and is responsible for the overall standards of code review for Android. From 2006 to 2009, Steve Horowitz was an Engineering Director for Android and was responsible for the overall standards of code review for Android. The Google Open Source Program Office is responsible for the overall standards of open source code review for Google, including compliance with third party licenses. Chris DiBona is the Open Source Program Manager.

The Android Open Source Project team is responsible for reviewing all external contributions to Android, as well as for the final review of open source code prior to each public release of Android. The Android Open Source Project team consists of Dan Morrill and Jean Baptiste-Queru. Prior to 2008, Chis DiBona and Daniel Berlin were involved in the open source code review of Android.

Jesse Wilson was responsible for collecting the Apache Authorized Contributor Questionnaires and Individual Contributor License Agreements for contributions to the Android core libraries.

INTERROGATORY NO. 3:

Please explain the factual and legal bases for Google’s pleading of its first affirmative defense: No Patent Infringement.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible

information. Google further objects to the request to “explain” factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google further objects that Oracle has not complied with its Patent Local Rule 3-1 obligations and Oracle’s Patent Infringement contentions remain unclear. Google provides these responses subject to the lack of clarity provided by Oracle. Inclusion of Oracle’s allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings. Google further objects to this Interrogatory as unnecessary in view of the specific disclosures contemplated by the Patent Local Rules as well as premature at least because no claim terms have been construed and any response herein is made in view of the lack of certainty with respect to the resolution of the meaning of claim terms.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle’s Complaint and Exhibits (Doc. #1).
- Allegations contained in Oracle’s Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in presentation materials received from Oracle pursuant to Fed. R. Evid. 408.
- The patents-in-suit and their prosecution histories.
- Android source code.
- Android documentation, including public documentation located at <http://source.android.com/>; <http://developer.android.com/>; <http://code.google.com/android/>; <http://sites.google.com/site/io/dalvik-vm-internals>.

Google further states the following based on Oracle’s contentions as presently understood:

- 1 • Oracle has not made any showing or specific allegation of indirect infringement attributable
2 to Google through inducement or contributory infringement. For example, Oracle has not
3 demonstrated that Google had specific knowledge of the asserted patents sufficient for either
4 inducement or contributory infringement. Oracle further has not demonstrated that the
5 Accused Instrumentalities were not capable of substantial noninfringing uses. As presently
6 understood, Oracle cannot make these showings.
- 7 • Oracle has not made any showing or any specific allegation of direct infringement, for
8 example, because it has not demonstrated that methods have been performed. As presently
9 understood, Oracle cannot make these showings because one or more functionalities
10 identified as infringing were not implemented and used in any products.
- 11 • Oracle has not made any showing or any specific allegation that Google directed and
12 controlled other parties to the extent multiple parties are required to infringe a claim. As
13 presently understood, Oracle cannot make this showing. Until Oracle identifies on a claim
14 by claim basis the identity of alleged direct infringers performing each step of each asserted
15 claim, Google cannot respond more completely to this Interrogatory.
- 16 • Google will set forth its invalidity contentions pursuant to the Patent Local Rules and the
17 Case Management Order. Google contends that each asserted claim is invalid and therefore
18 Google cannot infringe such a claim.
- 19 • Upon information and belief, Google contends that one or more accused functionalities are
20 properly licensed by Google or by one or more alleged direct infringers. By way of example,
21 Oracle accuses its own javac compiler as an element of its allegations for United States
22 Patent No. 6,061,520. Upon information and belief, Google expects discovery to reveal that
23 alleged direct infringers are licensed to use that product. Until Oracle identifies on a claim
24 by claim basis the identity of alleged direct infringers performing each step of each claim and
25 Google receives information regarding Oracle's licenses, Google cannot respond more fully
26 to this Interrogatory.
- 27 • As presently understood, Oracle cannot demonstrate infringement of asserted patents for at
28 least the following additional reasons:

- 1 ○ As presently understood, with respect to United States Patent No. 6,061,520, the
2 Accused Instrumentalities do not meet the element in claim 1 of “simulating
3 execution of the byte codes of the clinit method against a memory without
4 executing the byte codes to identify the static initialization of the array by the
5 preloader” or other elements citing similar functionality.
- 6 ○ As presently understood, with respect to United States Patent No. RE38,104, the
7 Accused Instrumentalities do not meet the element of claim 11 of “a processor
8 configured to execute said instructions containing one or more symbolic
9 references by determining a numerical reference corresponding to said symbolic
10 reference, storing said numerical references, and obtaining data in accordance to
11 said numerical references,” or other elements citing similar functionality.
- 12 ○ As presently understood, with respect to United States Patent No. 6,910,205, the
13 Accused Instrumentalities do not meet the element of claim 1 of “generating, at
14 runtime, a new virtual machine instruction that represents or references one or
15 more native instructions that can be executed instead of said first virtual machine
16 instruction,” or other elements citing similar functionality.
- 17 ○ As presently understood, with respect to United States Patent No. 5,966,702, the
18 Accused Instrumentalities do not meet the element of claim 1 of “forming a multi-
19 class file comprising said plurality of reduced class files,” or other elements citing
20 similar functionality.
- 21 ○ As presently understood, with respect to United States Patent No. 6,125,447 and
22 United States Patent No. 6,192,476, the Accused Instrumentalities do not meet
23 any substantive elements of the claims.
- 24 ○ As presently understood, with respect to United States Patent No. 7,426,720, the
25 Accused Instrumentalities do not meet the element of claim 1 of “a copy-on write
26 process cloning mechanism to instantiate the child runtime system process by
27 copying references to the memory space of the master runtime system process
28 into a separate memory space for the child runtime system process, and to defer

1 copying of the memory space of the master runtime system process until the child
2 runtime system process needs to modify the referenced memory space of the
3 master runtime system process,” or other elements citing similar functionality.

4 Google reiterates that the above contentions are being made very prematurely and in view
5 of inadequate disclosures by Oracle, as well as in advance of any claim construction rulings.
6 Google reserves the right to amend and supplement this response as it gains more insight into
7 Oracle’s contentions, as well as after any claim construction order.

8 **INTERROGATORY NO. 4:**

9 Please explain the factual and legal bases for Google’s pleading of its third affirmative
10 defense: Patent Unenforceability (Waiver, Estoppel, Laches).

11 **RESPONSE:**

12 In addition to its General Objections, Google objects to this Interrogatory as it seeks
13 information protected by the attorney-client privilege, the work product doctrine, and/or any
14 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory
15 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible
16 information. Google further objects to the request to “explain” factual bases as vague and
17 ambiguous. Google further objects to any implication in this Interrogatory that Google has any
18 burden beyond what is required by any applicable statute or case law. Google further objects to
19 any implication that the theories of patent unenforceability included under this heading in
20 Google’s Answer and Counterclaims necessarily share common factual or legal bases. Google
21 further objects to extent that certain factual contentions involved in the pleading of these theories
22 were made “upon information and belief” that, after a reasonable opportunity for further
23 investigation, Google would likely have evidentiary support. Google has made discovery
24 requests related to this defense but has not yet received responsive information. Inclusion of
25 Oracle’s allegations in the list of facts in this response does not mean that Google agrees with the
26 veracity of the allegation, but merely references the fact that particular allegations were made.
27 Google expressly maintains all objections made in responsive pleadings. Google further objects
28 to this Interrogatory as unnecessary in view of the specific disclosures contemplated by the

Patent Local Rules as well as premature at least because claim terms have not been construed and any response herein is made in view of the lack of certainty with respect to the resolution of the meaning of claim terms.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of the Federal Rules of Evidence.
- The patents-in-suit and their prosecution histories.
- Publicly available documents with information regarding the statements and actions of Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and Counterclaims under the heading "The Java Platform and Programming Language," as well as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- Publicly available documents with information regarding the development of the Android Platform, including the information disclosed in paragraphs 11 through 17 of the counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open Handset Alliance and Development of the Android Platform."
- Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the heading "Android and the Java Programming Language" of Google's Answer and Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through GOOGLE-00320077.

Google further states that, as reflected in Oracle's Patent Local Rule 3-1 disclosures, Oracle was aware of Android pursuant to discussions with Andy Rubin prior to Android's acquisition by Google, which are believed to have occurred at least as early as 2005. Google

1 further states that Oracle was aware of Android and the Open Handset Alliance, at least as early
2 as November 2007, as reflected by Jonathan Schwartz's public comments congratulating Google
3 and the Open Handset Alliance on the announcement of Android. Nevertheless, Oracle waited
4 several years before bringing suit, while the Android market grew and while Google and
5 numerous handset manufacturers and other entities made significant investments in the Android
6 Platform. Google further states that Oracle's actions, including statements and actions of its
7 predecessor Sun encouraging use of the Java programming language, form the basis of Google's
8 defenses involving waiver, estoppel and laches. Google has a reasonable belief that the
9 discovery it requested will reveal additional evidence to support this defense and reserves the
10 right to supplement this response accordingly.

11 **INTERROGATORY NO. 5:**

12 Please explain the factual and legal bases for Google's pleading of its fourth affirmative
13 defense: Substantial Non-Infringing Uses (Patent).

14 **RESPONSE:**

15 In addition to its General Objections, Google objects to this Interrogatory as it seeks
16 information protected by the attorney-client privilege, the work product doctrine, and/or any
17 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory
18 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible
19 information. Google further objects to the request to "explain" factual bases as vague and
20 ambiguous. Google further objects to any implication in this Interrogatory that Google has any
21 burden beyond what is required by any applicable statute or case law. Inclusion of Oracle's
22 allegations in the list of facts in this response does not mean that Google agrees with the veracity
23 of the allegation, but merely references the fact that particular allegations were made. Google
24 expressly maintains all objections made in responsive pleadings. Google further objects to this
25 Interrogatory as unnecessary in view of the specific disclosures contemplated by the Patent Local
26 Rules as well as premature at least because claim terms have not been construed and any
27 response herein is made in view of the lack of certainty with respect to the resolution of the
28 meaning of claim terms.

1 Subject to the foregoing objections and the General Objections, without waiver or
 2 limitation thereof, Google states that the following facts relevant to this defense were in its
 3 possession or accessible to Google at the time it pleaded this defense in its Answer and
 4 Counterclaims:

- 5 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 6 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 7 • Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of
 8 the Federal Rules of Evidence.
- 9 • The patents-in-suit and their prosecution histories.
- 10 • Android source code.
- 11 • Android documentation, including public documentation located at
 12 <http://source.android.com/>; <http://developer.android.com/>; <http://code.google.com/android/>;
 13 <http://sites.google.com/site/io/dalvik-vm-internals>.
- 14 • Publicly available facts as to the operation of Android devices, including websites with
 15 device specifications, as well as facts attainable by examining the devices themselves.

16 Google further states that, pursuant to 35 U.S.C. § 271(c), Oracle has the burden to
 17 demonstrate that each Accused Instrumentality is "not a staple article or commodity of
 18 commerce suitable for substantial noninfringing use." Oracle has made no such allegation or any
 19 attempt to meet this burden. Further, as presently understood, Oracle cannot meet this burden
 20 because the Accused Instrumentalities, such as mobile handsets, are capable of substantial
 21 noninfringing uses. Further, because Oracle has not identified any actual performance of any
 22 method on any specific Accused Instrumentality and therefore has not even identified a single
 23 purported infringing use, Google cannot meaningfully address all non-infringing uses at this
 24 time. As presently understood, all uses are noninfringing uses for the reasons cited in response
 25 to Interrogatory No. 3. Google reserves the right to supplement this response as it gains more
 26 clarity into both Oracle's allegations and the construction of claim terms.

INTERROGATORY NO. 6:

Please explain the factual and legal bases for Google's pleading of its fifth affirmative defense: Limitation On Patent Damages.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to "explain" factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google has made discovery requests related to this defense but has not yet received responsive information. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings. Google further objects to this Interrogatory as unnecessary in view of the specific disclosures contemplated by the Patent Local Rules as well as premature at least because claim terms have not been construed and any response herein is made in view of the lack of certainty with respect to the resolution of the meaning of claim terms.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of the Federal Rules of Evidence.
- The patents-in-suit and their prosecution histories.

- Public information relating to Java releases and related documentation.

Google further states that as presently understood, Oracle is not seeking damages for purported infringement committed more than six years prior to the filing of the complaint for infringement in the action, but to the extent that it does, such a claim would be barred by 35 U.S.C. § 286. As presently understood, Oracle has not given notice to the public by properly marking products purportedly covered by the asserted patents and any damages are therefore limited pursuant to 35 U.S.C. § 287. Google has requested document production from Oracle relating to marking to support this defense and reserves the right to supplement this response accordingly. Google further states that each asserted patent includes invalid claims, and that any damages are therefore limited pursuant to 35 U.S.C. § 288.

INTERROGATORY NO. 7:

Please explain the factual and legal bases for Google's pleading of its sixth affirmative defense: Misuse.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to "explain" factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google further objects to the extent that certain factual contentions involved in the pleading of this theory were made "upon information and belief" that, after a reasonable opportunity for further investigation, Google would likely have evidentiary support. Google has made discovery requests related to this defense but has not yet received responsive information. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings. Google further objects to this

Interrogatory as unnecessary in view of the specific disclosures contemplated by the Patent Local Rules as well as premature at least because claim terms have not been construed and any response herein is made in view of the lack of certainty with respect to the resolution of the meaning of claim terms.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and

Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of the Federal Rules of Evidence.
- The patents-in-suit and their prosecution histories.
- Publicly available documents with information regarding the statements and actions of Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and Counterclaims under the heading "The Java Platform and Programming Language," as well as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- Publicly available documents with information regarding the development of the Android Platform, including the information disclosed in paragraphs 11 through 17 of the counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open Handset Alliance and Development of the Android Platform."
- Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the heading "Android and the Java Programming Language" of Google's Answer and Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through GOOGLE-00320077.

Google further states that Oracle and its predecessor Sun have attempted to impermissibly expand the scope of the asserted patents and copyrights by requiring licensees to

1 license items not covered by Oracle's alleged intellectual property in order to receive a license to
2 Oracle's alleged intellectual property or to engage in activities for which no license is required.
3 Specifically, Oracle has used its copyright registrations in an attempt to extract licensing revenue
4 for a larger body of material than what is covered by its intellectual property and to restrict the
5 rights of third parties to truthfully state that, for example, products are "Java compatible."
6 Google has a reasonable belief that the discovery it requested will reveal additional evidence to
7 support this defense and reserves the right to supplement this response accordingly.

8 **INTERROGATORY NO. 8:**

9 Please explain the factual and legal bases for Google's pleading of its eighth affirmative
10 defense: Use By The United States.

11 **RESPONSE:**

12 In addition to its General Objections, Google objects to this Interrogatory as it seeks
13 information protected by the attorney-client privilege, the work product doctrine, and/or any
14 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory
15 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible
16 information. Google further objects to the request to "explain" factual bases as vague and
17 ambiguous. Google further objects to any implication in this Interrogatory that Google has any
18 burden beyond what is required by any applicable statute or case law. Inclusion of Oracle's
19 allegations in the list of facts in this response does not mean that Google agrees with the veracity
20 of the allegation, but merely references the fact that particular allegations were made. Google
21 expressly maintains all objections made in responsive pleadings. Google further objects to this
22 Interrogatory as unnecessary in view of the specific disclosures contemplated by the Patent Local
23 Rules as well as premature at least because claim terms have not been construed and any
24 response herein is made in view of the lack of certainty with respect to the resolution of the
25 meaning of claim terms.

26 Subject to the foregoing objections and the General Objections, without waiver or
27 limitation thereof, Google states that the following facts relevant to this defense were in its
28

possession or accessible to Google at the time it pleaded this defense in its Answer and

Counterclaims:

- Allegations contained in Oracle’s Complaint and Exhibits (Doc. #1).
- Allegations contained in Oracle’s Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of the Federal Rules of Evidence.
- The patents-in-suit and their prosecution histories.
- Publicly available documents with information regarding the use of the Android Platform by the United States, including documents produced at GOOGLE-00305770 through GOOGLE-00305802.

Google further states that evidence of use of Android devices and applications by the United States Government is readily available in the public domain. For example, the “Raytheon Android Tactical System” was developed for use by the Department of Defense. (*See, e.g.*, GOOGLE-00305774 to GOOGLE-00305776.) For any Accused Instrumentality which is used or manufactured by or for the United States, Oracle’s remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of its reasonable and entire compensation for such use and manufacture.

INTERROGATORY NO. 9:

Please explain the factual and legal bases for Google’s pleading of its tenth affirmative defense: Elements Not Protected by Copyright.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to “explain” factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google has made

discovery requests related to this defense but has not yet received responses. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- Publicly available information relating to the works that are the subject of the copyrights asserted by Oracle (the "Asserted Works") including the documents produced at GOOGLE-00319933 through GOOGLE-00320071.

Google further states that, as presently understood, Oracle's allegations of copyright infringement appear to include and/or be based, at least in part, on elements of the Asserted Works that are purely functional (such as key words and operators); elements (such as programming methods) that consist of abstract ideas, procedures, processes, systems, methods of operation, concepts or principles that are not protectable by copyright; elements (including variable identifiers or types, class names, file names, or other words and short phrases) that are not eligible for copyright protection; elements that are not original, including machine-generated documentation and machine-generated spacing, organization, or "white space" in source code files; elements as to which idea and expression are merged (such as routine invocation or encapsulation of classes); elements that constitute the programming equivalents of unprotectable, common "scènes à faire" (such as programming techniques that are commonly used in the industry other than in the Asserted Works, or constitute best practices in programming unrelated to the Asserted Works) or are otherwise elements dictated by external factors (such as hardware

and design constraints); elements that have entered the public domain; and/or elements that are subject to a limited number of forms of expression due to functional or other considerations. In addition, any similarities between any protectable elements of the Asserted Works and the Android Platform are, at most, de minimis and not actionable. Google has served Interrogatories to obtain further details regarding Oracle's copyright allegations and requires complete responses to those Interrogatories to respond more completely to this Interrogatory. Google therefore reserves the right to supplement this response accordingly.

INTERROGATORY NO. 10:

Please explain the factual and legal bases for Google's pleading of its eleventh affirmative defense: Copyright Unenforceability (Waiver, Estoppel, Laches).

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeks information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to "explain" factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google further objects to any implication that the theories of copyright unenforceability included under this heading in Google's Answer and Counterclaims necessarily share common factual or legal bases. Google further objects to extent that certain factual contentions involved in the pleading of these theories were made "upon information and belief," that after a reasonable opportunity for further investigation, Google would likely have evidentiary support. Google has made discovery requests related to this defense but has not yet received responsive information. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings.

Subject to the foregoing objections and the General Objections, without waiver or

1 limitation thereof, Google states that the following facts relevant to this defense were in its
 2 possession or accessible to Google at the time it pleaded this defense in its Answer and

3 Counterclaims:

- 4 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 5 • Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- 6 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 7 • Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- 8 • Publicly available information relating to the Asserted Works including the documents
 9 produced at GOOGLE-00319933 through GOOGLE-00320071.
- 10 • Publicly available documents with information regarding the statements and actions of
 11 Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in
 12 paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and
 13 Counterclaims under the heading "The Java Platform and Programming Language," as well
 14 as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 15 • Publicly available documents with information regarding the development of the Android
 16 Platform, including the information disclosed in paragraphs 11 through 17 of the
 17 counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open
 18 Handset Alliance and Development of the Android Platform."
- 19 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the
 20 heading "Android and the Java Programming Language" of Google's Answer and
 21 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through
 22 GOOGLE-00320077.

23 Google further states that, as reflected in Oracle's Patent Local Rule 3-1 disclosures,
 24 Oracle was aware of Android pursuant to discussions with Andy Rubin prior to Android's
 25 acquisition by Google, which are believed to have occurred at least as early as 2005. Google
 26 further states that Oracle was aware of Android and the Open Handset Alliance, at least as early
 27 as November 2007, as reflected by Jonathan Schwartz's public comments congratulating Google
 28 and the Open Handset Alliance on the announcement of Android. Nevertheless, Oracle waited

1 several years before bringing suit, while the Android market grew and while Google and
2 numerous handset manufacturers and other entities made significant investments in the Android
3 Platform. Google further states that Oracle's actions, including statements and actions of its
4 predecessor Sun encouraging use of the Java programming language, form the basis of Google's
5 defenses involving waiver, estoppel and laches. Google has a reasonable belief that the
6 discovery it has requested will reveal additional evidence to support this defense and reserves the
7 right to supplement this response accordingly.

8 Google further states that, upon information and belief, Oracle knew at least as early as
9 May 2005 that elements of the Android Platform were made publicly available by the Apache
10 Software Foundation under the terms of the Apache Software License version 2.0 and were
11 necessary to allow for interoperability. Upon information and belief, Oracle has never pursued
12 any claim against the Apache Software Foundation or accused the materials created by the
13 Apache Harmony Project of infringement and it is a publicly known fact that many members of
14 the software development community have relied upon the availability of software code
15 embodied in the Apache Harmony Project materials under the terms of the Apache Software
16 License version 2.0 and used or distributed that code under those terms. Google has a reasonable
17 belief that the discovery it has requested will reveal additional evidence to support this defense
18 and reserves the right to supplement this response accordingly.

19 **INTERROGATORY NO. 11:**

20 Please explain the factual and legal bases for Google's pleading of its twelfth affirmative
21 defense: Fair Use.

22 **RESPONSE:**

23 In addition to its General Objections, Google objects to this Interrogatory as it seeking
24 information protected by the attorney-client privilege, the work product doctrine, and/or any
25 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory
26 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible
27 information. Google further objects to the request to "explain" factual bases as vague and
28 ambiguous. Google further objects to any implication in this Interrogatory that Google has any

burden beyond what is required by any applicable statute or case law. Google has made discovery requests related to this defense but has not yet received responses. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- Publicly available information relating to the Asserted Works including the documents produced at GOOGLE-00319933 through GOOGLE-00320071.

Google further states that, as presently understood, Oracle's allegations are such that the nature of the works asserted by Oracle and covered by the Asserted Copyrights, the amount (if any) and substantiality of the portions of such works used by Google in relation to the works as a whole, the purpose and character of any use thereof made by Google, and the effect, if any, of such use on the potential market for the works, when taken together, preclude Oracle's claims due to the doctrine of fair use pursuant to 17 U.S.C. § 107. More specifically, Google asserts that any use in the Android Platform of any protectable, copyrighted elements of any works of Oracle is for functional, best practices, or technical efficiency reasons, to enable the use on Android devices of applications or other materials written in the Java programming language and/or for other Java platforms; that any such use is de minimis when compared to the Android Platform or the Asserted Works of Oracle; that any such use is necessary to enable interoperability of such applications or materials on the Android Platform; and that any such use is a fair use. Google has served Interrogatories to obtain further details regarding Oracle's

copyright allegations and requires complete responses to those Interrogatories to respond more completely to this Interrogatory. Google therefore reserves the right to supplement this response accordingly.

INTERROGATORY NO. 12:

Please explain the factual and legal bases for Google's pleading of its fourteenth affirmative defense: No Intent to Induce Copyright Infringement.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeking information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to "explain" factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google has made discovery requests related to this defense but has not yet received responses. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- Publicly available information relating to the Asserted Works including the documents produced at GOOGLE-00319933 through GOOGLE-00320071.

1 Google states that its intention not to induce infringement is evidenced by, among other
2 things, the fact that Android was developed through independent creation and use of material
3 duly licensed or unprotectable, and measures taken to ensure that Android was comprised only of
4 material that was original to Google, duly licensed or unprotectable. Google further states that,
5 upon information and belief, Oracle knew at least as early as May 2005 that elements of the
6 Android Platform were made publicly available by the Apache Software Foundation under the
7 terms of the Apache Software License version 2.0 and were necessary to allow for
8 interoperability. Upon information and belief, Oracle has never pursued any claim against the
9 Apache Software Foundation or accused the materials created through the Apache Harmony
10 Project of infringement and it is a publicly known fact that many members of the software
11 development community have relied upon the availability of software code embodied in the
12 Apache Harmony Project materials under the terms of the Apache Software License version 2.0
13 and used or distributed that code under those terms. Google has a reasonable belief that the
14 discovery it has requested will reveal additional evidence to support this defense. In addition,
15 any similarities between the Android Platform and the Asserted Works are, at most, de minimis
16 and not actionable and/or involve unprotectable elements.

17 Google further states that Oracle has not met its burden to establish indirect infringement
18 attributable to Google through inducement. For example, as presently understood, Oracle has
19 not demonstrated that Google has engaged in purposeful, culpable expression or conduct
20 designed or intended to result in others infringing Oracle's Asserted Copyrights. As presently
21 understood, Oracle cannot make this showing, precluding a finding of inducement of copyright
22 infringement. Google has served Interrogatories to obtain further details regarding Oracle's
23 copyright allegations and requires complete responses to those Interrogatories to respond more
24 fully to this Interrogatory. Google therefore reserves the right to supplement this response
25 accordingly.

26 **INTERROGATORY NO. 13:**

27 Please explain the factual and legal bases for Google's pleading of its fifteenth
28 affirmative defense: Independent Creation.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as it seeking information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to “explain” factual bases as vague and ambiguous. Google further objects to any implication in this Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google has made discovery requests related to this defense but has not yet received responses. Inclusion of Oracle’s allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle’s Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google’s Motion to Dismiss (Doc. #33).
- Allegations contained in Oracle’s Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in Oracle’s Opposition to Google’s Motion to Dismiss (Doc. #40).
- Publicly available information relating to the Asserted Works including the documents produced at GOOGLE-00319933 through GOOGLE-00320071.
- Documents relating to third parties including statements of work, which are being withheld pending third party permission to produce, and authorized contributor questionnaires produced at GOOGLE-00320078 through GOOGLE-00320235.
- Google’s internal compliance policies, which will be produced in Google’s custodial production for individuals identified in response to Interrogatory No. 2.

1 Google further states that the Android Platform, including the Android operating system,
 2 the Android Software Development Kit and the Dalvik Virtual Machine, was created
 3 independently of any works protected by the Asserted Copyrights. More particularly, the
 4 instructions provided by Google to all individuals involved in development of the source code
 5 for the Android core libraries were to use only materials in the public domain and/or available
 6 under so-called “permissive” or attribution-only source licenses such as the Apache Software
 7 License version 2.0 or equivalent such licenses, and/or to create new code without reference to
 8 any protectable materials, and, to the best of Google’s knowledge, these instructions were
 9 complied with as to all source code releases for the Android Platform.

10 Google further states in response to this Interrogatory that certain third parties contributed
 11 to the development of code for Android, but that the identities of such third parties and the
 12 specific nature of their involvement is subject to contractual confidentiality provisions. Google
 13 is undertaking to obtain the consent of the relevant parties to disclosing additional information,
 14 and reserves the right to supplement this response promptly once such consent is obtained.

15 **INTERROGATORY NO. 14:**

16 Please explain the factual and legal bases for Google’s pleading of its sixteenth
 17 affirmative defense: Third Party Liability.

18 **RESPONSE:**

19 In addition to its General Objections, Google objects to this Interrogatory as it seeking
 20 information protected by the attorney-client privilege, the work product doctrine, and/or any
 21 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory
 22 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible
 23 information. Google further objects to the request to “explain” factual bases as vague and
 24 ambiguous. Google further objects to any implication in this Interrogatory that Google has any
 25 burden beyond what is required by any applicable statute or case law. Inclusion of Oracle’s
 26 allegations in the list of facts in this response does not mean that Google agrees with the veracity
 27 of the allegation, but merely references the fact that particular allegations were made. Google
 28 expressly maintains all objections made in responsive pleadings.

1 Subject to the foregoing objections and the General Objections, without waiver or
 2 limitation thereof, Google states that the following facts relevant to this defense were in its
 3 possession or accessible to Google at the time it pleaded this defense in its Answer and
 4 Counterclaims:

- 5 • Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- 6 • Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- 7 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 8 • Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- 9 • Publicly available information relating to the Asserted Works including the documents
 10 produced at GOOGLE-00319933 through GOOGLE-00320071.
- 11 • Documents relating to third parties including statements of work, which are being withheld
 12 pending third party permission to produce, and authorized contributor questionnaires
 13 produced at GOOGLE-00320078 through GOOGLE-00320235.

14 Google further states that Google took reasonable steps to insure that any third parties
 15 involved in the development of Android did not use or reference existing source code other than
 16 materials that were in the public domain and/or openly available through permissive (or
 17 equivalent) licenses. Examples of these representations are included in the production cited. To
 18 the extent any third party or individual did not perform its tasks according to Google's
 19 requirements, those actions were without Google's knowledge and are not attributable to Google.

20 Google further states in response to this Interrogatory that certain third parties contributed
 21 to the development of code for Android, but that the identities of such third parties and the
 22 specific nature of their involvement is subject to contractual confidentiality provisions. Google
 23 is undertaking to obtain the consent of the relevant parties to disclosing additional information,
 24 and reserves the right to supplement this response, as well as other responses including its
 25 response promptly once such consent is obtained. Further, Google's investigation into
 26 identifying additional third parties (if any) is ongoing, and Google therefore reserves the right to
 27 supplement this response accordingly.

INTERROGATORY NO. 15:

Please explain the factual and legal bases for Google's pleading of its seventeenth and eighteenth affirmative defenses: License and Implied License.

RESPONSE:

In addition to its General Objections, Google objects to this Interrogatory as an explicit multiple-part Interrogatory going to two different defenses and the following objections refer to both distinct requests. Google further objects to this multi-part Interrogatory as seeking information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, immunity, or protection. Google further objects to this multi-part Interrogatory as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible information. Google further objects to the request to "explain" factual bases as vague and ambiguous. Google further objects to any implication in this multi-part Interrogatory that Google has any burden beyond what is required by any applicable statute or case law. Google further objects to extent that certain factual contentions involved in the pleading of these defenses were made "upon information and belief" that, after a reasonable opportunity for further investigation, Google would likely have evidentiary support. Google has served discovery requests related to these defenses but has not yet received responsive information. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings. Google further objects to this multi-part Interrogatory as unnecessary with respect to the defenses as they pertain to patent in view of the specific disclosures contemplated by the Patent Local Rules.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded these defenses in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google's Motion to Dismiss (Doc. #33).

- 1 • Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- 2 • Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- 3 • Publicly available information relating to the Asserted Works including the documents
- 4 produced at GOOGLE-00319933 through GOOGLE-00320071.
- 5 • Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of
- 6 the Federal Rules of Evidence.
- 7 • The patents-in-suit and their prosecution histories.
- 8 • Publicly available documents with information regarding the statements and actions of
- 9 Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in
- 10 paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and
- 11 Counterclaims under the heading "The Java Platform and Programming Language," as well
- 12 as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- 13 • Publicly available documents with information regarding the development of the Android
- 14 Platform, including the information disclosed in paragraphs 11 through 17 of the
- 15 counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open
- 16 Handset Alliance and Development of the Android Platform."
- 17 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the
- 18 heading "Android and the Java Programming Language" of Google's Answer and
- 19 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through
- 20 GOOGLE-00320077.

21 Google further states that, as presently understood, Oracle's allegations are directed
 22 toward one or more functionalities that are likely licensed by alleged direct infringers for at least
 23 some Accused Instrumentalities. Because Oracle has not specified with precision the Accused
 24 Instrumentalities and alleged direct infringers, Google cannot respond more completely to this
 25 Interrogatory. By way of example, certain of Oracle's allegations with regard to the '520 patent
 26 include its own program, javac, as a component of the allegation. Upon information and belief,
 27 Google expects discovery to reveal that at least some alleged direct infringers are licensed to use
 28 that program. Until Oracle identifies on a claim by claim basis the identity of alleged direct

1 infringers performing each step of each claim and Google receives information regarding
2 Oracle's licenses, Google cannot respond more completely to this Interrogatory.

3 Google further states that in the absence of an explicit license to asserted patents and
4 copyrights, Google and other purported infringers are entitled to an implied license based on
5 Oracle's actions, including statements and actions of its predecessor Sun. Google has a
6 reasonable belief that the discovery it has served will reveal additional evidence to support this
7 defense and reserves the right to supplement this response accordingly.

8 Google further states that, upon information and belief, Oracle knew at least as early as
9 May 2005 that elements of the Android Platform were made publicly available by the Apache
10 Software Foundation under the terms of the Apache Software License version 2.0 and were
11 necessary to allow for interoperability. Upon information and belief, Oracle has never pursued
12 any claim against the Apache Software Foundation or accused the materials created through the
13 Apache Harmony Project of infringement and it is a publicly known fact that many members of
14 the software development community have relied upon the availability of software code
15 embodied in the Apache Harmony materials under the terms of the Apache Software License
16 version 2.0 and used or distributed that code under those terms. Google has a reasonable belief
17 that the discovery it has requested will reveal additional evidence to support this defense and
18 reserves the right to supplement this response accordingly.

19 **INTERROGATORY NO. 16:**

20 Please explain the factual and legal bases for Google's pleading of its nineteenth
21 affirmative defense: Unclean Hands.

22 **RESPONSE:**

23 In addition to its General Objections, Google objects to this Interrogatory as it seeking
24 information protected by the attorney-client privilege, the work product doctrine, and/or any
25 other applicable privilege, immunity, or protection. Google further objects to this Interrogatory
26 as unduly burdensome as it is not reasonably calculated to lead to the discovery of admissible
27 information. Google further objects to the request to "explain" factual bases as vague and
28 ambiguous. Google further objects to any implication in this Interrogatory that Google has any

burden beyond what is required by any applicable statute or case law. Inclusion of Oracle's allegations in the list of facts in this response does not mean that Google agrees with the veracity of the allegation, but merely references the fact that particular allegations were made. Google expressly maintains all objections made in responsive pleadings. Google further objects to this Interrogatory as unnecessary with respect to the defense as it pertains to Patents in view of the specific disclosures contemplated by the Patent Local Rules.

Subject to the foregoing objections and the General Objections, without waiver or limitation thereof, Google states that the following facts relevant to this defense were in its possession or accessible to Google at the time it pleaded this defense in its Answer and Counterclaims:

- Allegations contained in Oracle's Complaint and Exhibits (Doc. #1).
- Facts contained or cited in Google's Motion to Dismiss (Doc. #33).
- Allegations contained in Oracle's Amended Complaint and Exhibits (Doc. #36).
- Allegations contained in Oracle's Opposition to Google's Motion to Dismiss (Doc. #40).
- Publicly available information relating to the Asserted Works including the documents produced at GOOGLE-00319933 through GOOGLE-00320071.
- Allegations contained in presentation materials received from Oracle pursuant to Rule 408 of the Federal Rules of Evidence.
- The patents-in-suit and their prosecution histories.
- Publicly available documents with information regarding the statements and actions of Oracle and its predecessor Sun Microsystems, Inc. including the information disclosed in paragraphs 1 through 10 of the counterclaims asserted in Google's Answer and Counterclaims under the heading "The Java Platform and Programming Language," as well as the information produced at GOOGLE-00305323 through GOOGLE-00305769.
- Publicly available documents with information regarding the development of the Android Platform, including the information disclosed in paragraphs 11 through 17 of the counterclaims asserted in Google's Answer and Counterclaims under the heading "The Open Handset Alliance and Development of the Android Platform."

- 1 • Facts relating to the market for Android as disclosed in paragraphs 20 through 22 under the
2 heading “Android and the Java Programming Language” of Google’s Answer and
3 Counterclaims. These facts are publicly available, *see, e.g.*, GOOGLE-00320072 through
4 GOOGLE-00320077.

5 Google further states that Oracle has unclean hands at least for the reasons of its misuse
6 of its intellectual property, namely, that Oracle and its predecessor Sun have attempted to
7 impermissibly expand the scope of the asserted patents and copyrights by requiring licensees to
8 license items not covered by Oracle’s alleged intellectual property in order to receive a license to
9 Oracle’s alleged intellectual property or to engage in activities for which no license is required.
10 Specifically, Oracle has used its alleged copyright rights in an attempt to extract licensing
11 revenue for a larger body of material than what is covered by its intellectual property and to
12 restrict the rights of third parties to truthfully state that, for example, products are “Java
13 compatible.”

14 Google further states that it believes that Oracle knew as early as May 2005 that elements
15 of the Android Platform were made publicly available by the Apache Software Foundation under
16 the terms of the Apache Software License version 2.0 and were necessary to allow for
17 interoperability. Oracle has never pursued any claim against the Apache Software Foundation or
18 accused the materials created through the Apache Harmony Project of infringement and it is a
19 publicly known fact that many members of the software development community have relied
20 upon the availability of software code embodied in the Apache Harmony materials under the
21 terms of the Apache Software License version 2.0 and used or distributed that code under those
22 terms. Google has a reasonable belief that the discovery it has requested will reveal additional
23 evidence to support this defense and reserves the right to supplement this response accordingly.
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1 DATED: January 6, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on this day, January 6, 2011, I served a true and correct copy of
DEFENDANT GOOGLE INC.'S RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET
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Executed on January 6, 2011.

/s/ Steven T. Snyder
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